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11 *Attorneys for Plaintiffs*  
12 **TRAVIS VANOOSTENDORP**

13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 TRAVIS VANOOSTENDORP,

16  
17 Plaintiffs,

18 v.

19 EQUIFAX INFORMATION  
20 SERVICES, LLC, BANK OF  
21 AMERICA, N.A.,

22 Defendants.  
23  
24  
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26  
27  
28

Case No. : 2:18-cv-02121-RFB-CWH

**STIPULATION AND ORDER  
TO AMEND THE COMPLAINT**

**(First Request)**

1 Plaintiff TRAVIS VANOOSTENDORP (“Plaintiff”) and Defendant BANK  
2 OF AMERICA, N.A. (“BOA”), collectively the “Parties”<sup>1</sup>, respectfully submit the  
3 following Stipulation permitting the Plaintiff to file a Second Amended Complaint  
4 (hereinafter “SAC”, attached hereto as **Exhibit “1”**).

5  
6 Further, the Parties agree that filing the SAC moots BOA’s pending Motion  
7 to Dismiss. Acorrdingly, BOA withdraws its pending Motion to Dismiss [ECF  
8 Docket #9] and Plaintiff withdraws its Response [ECF Docket #12]. The SAC  
9 does not in any way waive or restrict Defendants’ right to timely move to dismiss  
10 the claims in the SAC or waive or restrict Plaintiff’s right to respond.  
11

12 IT IS SO STIPULATED this February 12, 2019.  
13  
14

15 /s/ Shawn W. Miller  
16 Shawn W. Miller, Esq.  
17 David H. Krieger, Esq.  
18 Haines & Krieger, LLC  
19 8985 S. Eastern Avenue, Suite 350  
20 Henderson, Nevada 89123  
21 *Attorneys for Plaintiff,*  
22 *Travis Vanoostendorp*

15 /s/ Rex D. Garner  
16 Rex D. Garner, Esq.  
17 Akerman LLP  
18 1635 Village Center Circle  
19 Suite 200  
20 Las Vegas, NV 89134  
21 *Attorneys for Defendant,*  
22 *Bank of America, N.A.*

23  
24  
25  
26  
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28 <sup>1</sup> Equifax Information Services, LCC (“Equifax”) is a named party in this case but has not entered an appearance and Plaintiff has reached a settlement with Equifax.

**ORDER**

IT IS SO ORDERED that this Stipulation and Order to Amend the Complaint is hereby GRANTED.

IT IS FURTHER ORDERED, that the Plaintiff shall file the SAC within seven (7) of entry of this Order.

IT IS FURTHER ORDERED that the Motion to Dismiss filed by BOA [ECF Docket #9] and Plaintiff's Response [ECF Docket #12] are hereby withdrawn. This Order shall not in any way waive or restrict Defendants' right to timely move to dismiss the claims in the SAC or waive or restrict Plaintiff's right to respond.

IT IS SO ORDERED:



RICHARD F. BOULWARE, II  
UNITED STATES DISTRICT JUDGE

DATED this 13th day of February, 2019.

# EXHIBIT “1”

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*TRAVIS D. VANOOSTENDORP*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TRAVIS D. VANOOSTENDORP,

Plaintiff,

v.

EQUIFAX INFORMATION  
SERVICES, LLC, BANK OF  
AMERICA, N.A.

Defendants.

:  
: Civil No.: 2:18-cv-02121-RFB-CWH  
:  
:  
: **SECOND AMENDED**  
: **COMPLAINT**  
:  
: **(JURY TRIAL DEMANDED)**  
:  
:  
:

Plaintiff, TRAVIS D. VANOOSTENDORP (“Plaintiff” or “Borrower”), by  
and through his counsel, hereby files this First Amended Complaint against  
EQUIFAX INFORMATION SERVICES, LLC (“Equifax”) and Bank of America,  
N.A. (“BOA”) (jointly with Equifax, “Defendants”) and alleges as follows:

**JURISDICTION AND VENUE**

1  
2 1. Plaintiff brings this action against Equifax and BOA for failing to  
3 comply with the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (“FCRA”);  
4 the Dodd-Frank Wall Street Reform and Consumer Protection Act (“DFA”), and  
5 the Real Estate Settlement Procedures Act (“RESPA”), 12 U.S.C. §§ 2601, *et seq.*  
6

7  
8 2. This action is specifically filed to enforce regulations promulgated by  
9 the Consumer Finance Protection Bureau (CFPB) that became effective on January  
10 10, 2014, specifically, 12 C.F.R. §§ 1024.35 and 1024.36, *et seq.*, of Regulation X.  
11

12 3. Plaintiff is asserting claims for relief against BOA for breaches of  
13 specific rules under Regulation X, as set forth, *infra*. Plaintiff has a private right of  
14 action under RESPA pursuant to 12 U.S.C. §2605(f) for the claimed breaches and  
15 such action provides for remedies including actual damages, costs, statutory  
16 damages, and attorneys’ fees.  
17

18  
19 4. This Court has federal question jurisdiction because this case arises  
20 out of violations of federal law, including FCRA, DFA, and RESPA. 15 U.S.C. §  
21 1681 *et seq.*; 28 U.S.C. § 1331; *Smith v. Community Lending, Inc.*, 773 F.Supp.2d  
22 941, 946 (D. Nev. 2011).  
23

24 5. Venue is proper in the United States District Court for the District of  
25 Nevada pursuant to 28 U.S.C. § 1391(b) because Plaintiff is a resident of Clark  
26 County, Nevada and because Defendants are subject to personal jurisdiction in  
27  
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Clark County, Nevada; Defendants conduct business in Clark County, Nevada; the events giving rise to this action occurred in Clark County, Nevada; and Defendants are registered with the Nevada Secretary of State.

### PARTIES

6. Plaintiff is a natural adult person residing in the County of Clark, State of Nevada. In addition, Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1681a(c).

7. Equifax is a Georgia limited liability company registered in Nevada as a foreign limited liability company and conducts business in Clark County, Nevada. Equifax regularly assembles and/or evaluates consumer credit information for the purpose of furnishing consumer credit reports to third parties, and uses interstate commerce to prepare and/or furnish the reports. Equifax is a “consumer reporting agency” as that term is defined by 15 U.S.C. § 1681a(f).

8. BOA is a federally chartered bank and conducts business in Clark County, Nevada. BOA is a furnisher of information as contemplated by 15 U.S.C. §1681s-2(b) which regularly and in the ordinary course of business furnishes information to consumer reporting agencies.

9. Unless otherwise indicated, the use of Defendants’ name in this Complaint includes all agents, employees, officers, members, directors, heirs,

1 successors, assigns, principals, trustees, sureties, subrogees, representatives, and  
2 insurers of Defendants.

3  
4 **GENERAL ALLEGATIONS**

5 10. Plaintiff is the owner of real property located at and commonly known  
6 as 4419 Crimson Leaf Drive, Las Vegas, NV 89130 (the "Property").  
7

8 11. Plaintiff, at all times relevant, has maintained and currently maintains  
9 the Property as Plaintiff's primary, principal residence.

10 12. BOA is the servicer of a purported home-equity line of credit loan  
11 (HELOC), secured by a second priority revolving credit deed of trust (DOT) on the  
12 Property (the HELOC loan and DOT shall be collectively referred to hereinafter as  
13 the "Loan" or "Debt").  
14

15 13. The Loan constitutes a "federally related mortgage loan" as that term  
16 is defined in 12 C.F.R. §1024.2(b).  
17

18 14. BOA is subject to Regulation X and does not qualify for the exception  
19 for "small servicers", as such term is defined in 12 C.F.R. §1026.41(e)(4), nor does  
20 BOA qualify for the exemption for a "qualified lender", as such term is defined in  
21 12 C.F.R. § 617.700.  
22

23 15. BOA has been the servicer of the Loan at all times since the Loan  
24 origination on or about January 10, 2005.  
25  
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1           16. On or about April 8, 2011, Plaintiff filed for Chapter 13 Bankruptcy in  
2 the United States Bankruptcy Court for the District of Nevada pursuant to 11  
3 U.S.C. § 1301 et seq. Plaintiff's case was assigned Case Number 11-15252-leb (the  
4 "Bankruptcy").  
5

6           17. BOA was notified of the Bankruptcy and actively participated in the  
7 Bankruptcy by filing notices and documents with the Bankruptcy Court in  
8 Plaintiff's case.  
9

10                                   **BOA's Bankruptcy Accounting Practices**  
11

12           18. On or about June 21, 2011, BOA filed a proof of claim in the  
13 Bankruptcy. The proof of claim asserted that as of April 8, 2011 ("Bankruptcy  
14 Petition Date"), the past due amount on the Loan was \$1,866.88 and the principal  
15 balance of the Loan was \$98,898.42. See Proof of Claim #4 in Case No. 11-  
16 15252-leb.  
17

18           19. On May 9, 2014, the Bankruptcy Court entered an order  
19 ("Confirmation Order") confirming Plaintiff's Chapter 13 plan ("Confirmed  
20 Plan"). See Doc 87 in Case No. 11-15252-leb.  
21

22           20. Pursuant to the Confirmed Plan, the \$1,866.88 owed to BOA was to  
23 be repaid, in full, at an interest rate of 0.00%, during the 60 month term of the  
24 Confirmed Plan.  
25  
26  
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21. Pursuant to the Confirmed Plan, Plaintiff was also obligated to maintain the Loan through regular monthly contractual payments.

22. BOA's filed proof of claim created a "fresh" starting point to account for Plaintiff's payments.

23. Plaintiff made his first regular maintenance payment to BOA, which was received by BOA on May 9, 2011 in the amount of \$300.00, but BOA failed to properly account for and apply Plaintiff's payment to the Loan.

24. The May 9, 2011 payment was enough to pay the accrued interest from April 8, 2011 to May 9, 2011 (\$272.99) and the principal balance should have been reduced by \$27.01. BOA miscalculated the interest (\$264.18) and failed to reduce the principal. It is not clear what BOA did with the \$27.01 (\$35.82), applying it to "Misc Posting", but it is clear it was not applied to principal like it should have been applied.

Transaction Date	Description	Total Payment	PMT/MO	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
05/09/2011	REGULAR PAYMENT	264.18	06/2011	.00	264.18	.00	.00	.00	.00	.00
				98,888.42		.00			.00	.00
05/09/2011	MISC. POSTING	35.82	06/2011	.00	35.82	.00	.00	.00	.00	.00
				98,888.42		.00			.00	.00

25. The same accounting problem happened in June 2011. Plaintiff made his June 2011 payment, which was received by BOA on June 6, 2011 in the amount of \$522.99.

26. The June 2011 payment was enough to pay the accrued interest from May 9, 2011 to June 6, 2011 (\$246.50) and the principal balance should have been

reduced by \$276.49. BOA miscalculated the interest (\$264.18) and failed to reduce the principal. It is not clear what BOA did with the \$276.49 (\$258.81) applying it to “Misc Posting”, but it is clear it was not applied to principal like it should have been applied.

06/06/2011	REGULAR PAYMENT	264.18	07/2011	.00	264.18	.00	.00	.00	.00	.00
				<b>98,898.42</b>		<b>.00</b>			<b>.00</b>	<b>.00</b>
06/06/2011	MISC. POSTING	258.81	07/2011	.00	258.81	.00	.00	.00	.00	.00
				<b>98,898.42</b>		<b>.00</b>			<b>.00</b>	<b>.00</b>

27. Further, during the first six months of the Bankruptcy, BOA started adding random improper fees to the Loan, and engaged in other improper accounting and Loan payment applications.

28. BOA charged the following fees without any description or reason why the fees were charged. Specifically, BOA charged the following: \$250 on 4/15/2011; \$787.75 on /3/2011; \$125.00 on 8/10/2011; \$78.00 on 9/7/2011; \$599.25 on 9/9/2011; and \$15, \$200, \$360 and \$18 on 10/18/2011.

29. Interestingly, these fees show up on BOA’s Account transaction History, but they do not show at all on BOA’s Life of Loan account sheet. Compare the following:

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HAINES & KRIEGER, LLC  
8985 S. Eastern Avenue, Suite 350  
Henderson, Nevada 89123

# Account Transaction History

Bank of America  
Tuesday, March 13, 2018

Customer Name - TRAVIS D VANOOSTENDORP  
Account Number - [REDACTED] 5899

Effective Date	Posting Date	Description	Transaction Amount	Principal	Interest	Fees	Balance
05/09/2011	05/11/2011	Regular Pmt	\$300.00	\$0.00	\$300.00	\$0.00	\$98,898.42
06/06/2011	06/06/2011	Regular Pmt	\$522.99	\$0.00	\$522.99	\$0.00	\$98,898.42
07/13/2011	07/13/2011	Regular Pmt	\$264.18	\$0.00	\$264.18	\$0.00	\$98,898.42
08/03/2011	08/03/2011	Fee Assessed	\$787.75	\$0.00	\$0.00	\$787.75	\$98,898.42
08/10/2011	08/10/2011	Fee Assessed	\$125.00	\$0.00	\$0.00	\$125.00	\$98,898.42
08/15/2011	08/15/2011	Regular Pmt	\$272.98	\$0.00	\$272.98	\$0.00	\$98,898.42
09/07/2011	09/07/2011	Fee Assessed	\$78.00	\$0.00	\$0.00	\$78.00	\$98,898.42
09/09/2011	09/09/2011	Fee Assessed	\$599.25	\$0.00	\$0.00	\$599.25	\$98,898.42
09/23/2011	09/23/2011	Regular Pmt	\$264.18	\$0.00	\$264.18	\$0.00	\$98,898.42
10/18/2011	10/18/2011	Fee Assessed	\$15.00	\$0.00	\$0.00	\$15.00	\$98,898.42
10/18/2011	10/18/2011	Fee Assessed	\$200.00	\$0.00	\$0.00	\$200.00	\$98,898.42
10/18/2011	10/18/2011	Fee Assessed	\$360.00	\$0.00	\$0.00	\$360.00	\$98,898.42
10/18/2011	10/18/2011	Fee Assessed	\$41.00	\$0.00	\$0.00	\$41.00	\$98,898.42
10/31/2011	10/31/2011	Regular Pmt	\$273.00	\$0.00	\$273.00	\$0.00	\$98,898.42
12/01/2011	12/01/2011	Regular Pmt	\$264.18	\$0.00	\$264.18	\$0.00	\$98,898.42
01/06/2012	01/06/2012	Regular Pmt	\$273.00	\$0.00	\$273.00	\$0.00	\$98,898.42
02/03/2012	02/06/2012	Regular Pmt	\$264.18	\$0.00	\$264.18	\$0.00	\$98,898.42
02/24/2012	02/27/2012	Regular Pmt	\$272.81	\$0.00	\$272.81	\$0.00	\$98,898.42
04/01/2012	04/09/2012	Regular Pmt	\$399.30	\$0.00	\$399.30	\$0.00	\$98,898.42



Page 8

Transaction Date	Description	Total Payment	PMT/MO	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
05/09/2011	REGULAR PAYMENT	264.18	06/2011	98,898.42	264.18	.00	.00	.00	.00	.00
05/09/2011	MISC. POSTING	35.82	06/2011	98,898.42	35.82	.00	.00	.00	.00	.00
06/06/2011	REGULAR PAYMENT	264.18	07/2011	98,898.42	264.18	.00	.00	.00	.00	.00
06/06/2011	MISC. POSTING	258.81	07/2011	98,898.42	258.81	.00	.00	.00	.00	.00
07/13/2011	REGULAR PAYMENT	264.18	08/2011	98,898.42	264.18	.00	.00	.00	.00	.00
08/15/2011	REGULAR PAYMENT	272.98	09/2011	98,898.42	272.98	.00	.00	.00	.00	.00
09/23/2011	REGULAR PAYMENT	264.18	10/2011	98,898.42	264.18	.00	.00	.00	.00	.00
10/31/2011	REGULAR PAYMENT	272.99	11/2011	98,898.42	272.99	.00	.00	.00	.00	.00
10/31/2011	MISC. POSTING	.01	11/2011	98,898.42	.01	.00	.00	.00	.00	.00
12/01/2011	REGULAR PAYMENT	264.18	12/2011	98,898.42	264.18	.00	.00	.00	.00	.00
01/06/2012	REGULAR PAYMENT	272.99	01/2012	98,898.42	272.99	.00	.00	.00	.00	.00
01/06/2012	MISC. POSTING	.01	01/2012	98,898.42	.01	.00	.00	.00	.00	.00
02/03/2012	REGULAR PAYMENT	264.18	02/2012	98,898.42	264.18	.00	.00	.00	.00	.00
02/24/2012	REGULAR PAYMENT	254.68	03/2012	98,898.42	254.68	.00	.00	.00	.00	.00
02/24/2012	MISC. POSTING	18.13	03/2012	98,898.42	18.13	.00	.00	.00	.00	.00
04/01/2012	REGULAR PAYMENT	272.24	04/2012	98,898.42	272.24	.00	.00	.00	.00	.00
04/01/2012	MISC. POSTING	127.06	04/2012	98,898.42	127.06	.00	.00	.00	.00	.00
04/01/2012	PRINCIPAL ADJUST.	-211.63	09/2016	98,898.79	.00	.00	.00	.00	.00	.00

30. BOA stated that on September 28, 2012, it waived \$2,456 in erroneous fees, but nothing in the Life of Loan shows that \$2,456 in fees were waived by BOA.

06/27/2012	REGULAR PAYMENT	262.24	07/2012	.00	262.24	.00	.00	.00	.00	.00
				98,443.33		.00		.00	.00	.00
06/06/2012	REGULAR PAYMENT	166.73	06/2012	.00	166.73	.00	.00	.00	.00	.00
				98,443.33		.00		.00	.00	.00
06/07/2012	REGULAR PAYMENT	104.25	06/2012	.00	104.25	.00	.00	.00	.00	.00
				98,443.33		.00		.00	.00	.00
06/04/2012	REGULAR PAYMENT	270.98	06/2012	.00	270.98	.00	.00	.00	.00	.00
				98,443.33		.00		.00	.00	.00
10/04/2012	REGULAR PAYMENT	82.48	10/2012	.00	82.48	.00	.00	.00	.00	.00
				98,443.33		.00		.00	.00	.00
10/12/2012	REGULAR PAYMENT	270.98	11/2012	.00	270.98	.00	.00	.00	.00	.00
				98,443.33		.00		.00	.00	.00
10/12/2012	MISC. POSTING	29.02	11/2012	29.02	.00	.00	.00	.00	.00	.00
				98,411.31		.00		.00	.00	.00
11/05/2012	REGULAR PAYMENT	82.48	11/2012	.00	82.48	.00	.00	.00	.00	.00
				98,411.31		.00		.00	.00	.00
11/03/2012	REGULAR PAYMENT	300.00	12/2012	.00	300.00	.00	.00	.00	.00	.00
				98,411.31		.00		.00	.00	.00

31. Additionally, in 2012, BOA also started sending Plaintiff wildly erroneous Payment notices.

32. Repayment of the Loan was interest only until March 2015. The average payment notice should have been approximately \$250.00 - \$270.00 per month.

33. On December 10, 2011, BOA filed a Notice of Mortgage Payment Change indicating that the payment for December was \$880.18 and that the payment for January 2012 was \$522.99. The reason for the changes was “number of days in the billing cycle changed—changed in fees.” December and January have the same number of days and no fees were identified in any BOA accounting records for this month.

1           34. On December 10, 2011, BOA filed a Notice of Mortgage Payment  
2 Change indicating that the payment for December was \$880.18 and that the  
3 payment for January 2012 was \$522.99. The reason for the changes was “number  
4 of days in the billing cycle changed—changed in fees.” December and January  
5 have the same number of days and no fees were identified in any BOA accounting  
6 records for this month. This payment amount was not made in accordance with the  
7 HELOC Loan agreement.  
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9  
10           35. On March 8, 2012, BOA filed a Notice of Mortgage Payment Change  
11 indicating that the payment for April was \$1,059.99. This was three or four times  
12 what the rate should have been. BOA’s reason for the change was again “number  
13 of days in the billing cycle changed—changed in fees.” April has fewer days than  
14 March, the payment amount should have not gone up, but down. Also, BOA  
15 assessed additional mysterious fees that were not disclosed. This payment was not  
16 made in accordance with the HELOC Loan agreement.  
17  
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19           36. On April 10, 2012, BOA filed a Notice of Mortgage Payment Change  
20 indicating that the payment for May was \$388.46. While this was closer to what  
21 the actual payment amount, it was still off by over \$100. Again, no explanation for  
22 the wild swings in monthly payment amounts, except for BOA’s “number of days  
23 in the billing cycle changed—changed in fees” worthless description. This was not  
24 made in accordance with the HELOC Loan agreement.  
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1           37. On May 8, 2012, BOA filed another Notice of Mortgage Payment  
2 Change indicating that the payment for June was an astronomical \$2,507.23.  
3  
4 BOA's reason for this is almost as astonishing: interest rate change (from 4% to  
5 3.25%), number of days (from 31 to 30), and change in fees. In other words, the  
6 interest rate drops and the number of days in the billing cycle drop, so BOA  
7 increases the payment more than six fold. This calculation was not made in  
8 accordance with the HELOC Loan agreement.  
9

10  
11           38. On June 8, 2012, BOA filed a Notice of Mortgage Payment Change  
12 indicating that the payment for July was \$2,718.24. The cryptic reason for this  
13 change was "principal balance change—number of days in the billing cycle  
14 changed." The principal balance did not go up, so BOA charged Plaintiff \$211.01  
15 interest for the extra day in July (31 days as compared to June's 30 days). This  
16 calculation was not made in accordance with the HELOC Loan agreement.  
17  
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19           39. On July 10, 2012, BOA filed a Notice of Mortgage Payment Change  
20 indicating that the payment for July was \$2,726.98. The cryptic reason for this  
21 change was simply "number of days in the billing cycle changed." June and July  
22 have the same number of days, so the number of days did not change. In order for  
23 \$2,726.98 to be correct, the principal amount of the Loan would need to be  
24 \$987,938.16, nearly ten times the amount of the actual principal balance of the  
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1 Loan. This payment calculation was not made in accordance with the HELOC  
2 Loan agreement.

3  
4 40. BOA also filed a Notice of Mortgage Payment Change indicating that  
5 the payment for October 2012 was \$2,718.24—a tenfold increase over  
6 September’s payment of \$270.98. Once again, the cryptic reason for this change  
7 was “number of days in the billing cycle changed—change in fees.” s did not  
8 change. In order for \$2,726.98 to be correct, the principal amount of the Loan  
9 would need to be \$987,938.16, nearly ten times the amount of the actual principal  
10 balance of the Loan. This payment calculation was not made in accordance with  
11 the HELOC Loan agreement.

12  
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15 41. Because Plaintiff had been dealing with BOA’s horrendous  
16 accounting throughout 2011 and 2012, in March 2015 when the Loan draw period  
17 expired and P&I payments were required and the payments jumped from  
18 approximately \$270.00 to approximately \$860.00, Plaintiff continued tendering  
19 interest only payments until April 2017.

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22 42. Plaintiff believed he was making consistent, timely payment on the  
23 Loan during the Bankruptcy.



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**FIRST CAUSE OF ACTION  
BOA'S VIOLATIONS OF RESPA**

43. Plaintiff restates and incorporates herein all his statements and allegations contained in paragraphs 1 through 42 in their entirety as if fully set forth here.

44. Plaintiff was shocked and perplexed when he started receiving communications from BOA that he was past due on the Loan. He believed he was current on the Loan and had consistently tendered each and every installment payment to BOA in a timely manner.

45. In an effort to discover why BOA was threatening to foreclose on the Property and jeopardize his "fresh start", on or about February 21, 2018, Plaintiff sent written correspondence to BOA titled "*Request for Information Pursuant to 12 C.F.R. §1024.36 and 15 U.S.C. §1641(f)(2) Request for Payoff Statement Pursuant to C.F.R. §1026.36(c)(3)*" ("RFI 1") via certified mail, return receipt requested.

46. Among other things, RFI 1 requested a summary of credit information BOA had reported to the CRAs, the identity and address of the master servicer, current servicer and current owner of the Loan, a current payoff balance, and a life of loan mortgage transaction history (that shows the mortgage balance, receipt of all payments, and the assessment of fees or charges).

47. RFI 1 identified the Plaintiff by name, the Plaintiff's social security number, the Property address, and the Loan account number.

1           48. Plaintiff sent RFI 1 to the address BOA designated for the receipt of  
2 notices of error and requests for information pursuant to 12 C.F.R. §§1024.35(c)  
3 and 1024.36(b), respectively (the “Designated Address”).  
4

5           49. BOA received RFI 1 at the Designated Address within one week of  
6 mailing.  
7

8           50. BOA never notified Plaintiff that BOA had received RFI 1 within 5  
9 days (excluding legal public holidays, Saturdays and Sundays) of receiving  
10 Plaintiff’s RFI 1 in violation of 12 C.F.R. 1024.36(c).  
11

12           51. BOA never notified Plaintiff of any extension of time to respond to  
13 RFI 1 pursuant to 12 C.F.R. § 1024(d)(2)(ii).  
14

15           52. In response to RFI 1, on or about March 6, 2018, BOA provided an  
16 Account Transaction History, however, the Account Transaction History was  
17 wrong. The interest owed in May 2011 on the Account Transaction History was  
18 \$300 and the interest BOA claimed in the Bankruptcy proceeding was \$1,866.88.  
19 The Account Transaction History also failed to show how Plaintiff’s payments  
20 were applied and failed to describe the nature of the fees assessed to the Loan.  
21  
22

23           53. With regard to the other requests for information in RFI 1 (summary  
24 of credit reporting information, identity of the master servicer, current service and  
25 current owner of the Loan, and failed to provide an accurate payoff statement),  
26  
27  
28

BOA completely failed to respond at all within 30 days (exclusive of legal public holidays, Saturdays and Sundays) as required by 12 C.F.R. §1024.36(d)(2)(i).

54. Despite the multiplicity of accounting discrepancies and BOA's failure to adequately respond to RFI 1, BOA continued threatening foreclosure against Plaintiff.

55. On May 4, 2018, BOA sent a "Notice of intent to accelerate" to Plaintiff, threatening Plaintiff that the Loan was in default and if Plaintiff failed to cure the default before June 13, 2018 may result in acceleration of the Loan and the sale of the Property.

56. Remarkably, the Notice incorrectly stated that stated that Plaintiff had not paid the monthly payment for November 2016 thru May 2018, even though BOA's Account Transaction History showed that many of these payments had been received as follows below:

Effective Date	Posting Date	Description	Transaction Amount	Principal	Interest	Fees	Balance
11/14/2016	11/14/2016	Regular Pmt	\$283.66	\$83.22	\$200.44	\$0.00	\$95,363.80
12/20/2016	12/21/2016	Regular Pmt	\$273.98	\$273.98	\$0.00	\$0.00	\$95,089.82
01/10/2017	01/11/2017	Regular Pmt	\$282.76	\$188.19	\$94.57	\$0.00	\$94,901.63
01/31/2017	01/31/2017	Regular Pmt	\$8.94	\$0.00	\$8.94	\$0.00	\$94,901.63
02/19/2017	02/21/2017	Regular Pmt	\$280.00	\$112.55	\$167.45	\$0.00	\$94,789.08
03/16/2017	03/17/2017	Regular Pmt	\$273.04	\$273.04	\$0.00	\$0.00	\$94,516.04
04/18/2017	04/19/2017	Regular Pmt	\$847.45	\$585.24	\$262.21	\$0.00	\$93,930.80
05/16/2017	05/16/2017	Regular Pmt	\$836.93	\$568.38	\$268.55	\$0.00	\$93,362.42
06/28/2017	06/29/2017	Regular Pmt	\$865.20	\$605.12	\$260.08	\$0.00	\$92,757.30
06/28/2017	06/29/2017	Regular Pmt	\$852.84	\$582.62	\$270.22	\$0.00	\$92,174.68
08/25/2017	08/28/2017	Regular Pmt	\$878.10	\$545.39	\$332.71	\$0.00	\$91,629.29
08/25/2017	08/28/2017	Regular Pmt	\$861.26	\$545.39	\$315.87	\$0.00	\$91,083.90
10/16/2017	10/16/2017	Regular Pmt	\$866.00	\$545.39	\$320.61	\$0.00	\$90,538.51
12/03/2017	12/04/2017	Regular Pmt	\$874.17	\$545.39	\$328.78	\$0.00	\$89,993.12
12/25/2017	12/27/2017	Regular Pmt	\$862.16	\$545.39	\$316.77	\$0.00	\$89,447.73
02/09/2018	02/12/2018	Regular Pmt	\$871.88	\$545.39	\$326.49	\$0.00	\$88,902.34

1           57. Plaintiff was anxious and fearful because of BOA’s ongoing threats of  
2 foreclosure and the prospect of losing his home, also resulted in aggravation,  
3 anger, and frustration that BOA would not review the account, provide relevant  
4 information, correct the errors or otherwise respond in a meaningful way to  
5 Plaintiff, causing Plaintiff emotional distress.  
6

7  
8           58. Because of the multitude of errors in Plaintiff’s account and BOA’s  
9 inadequate response to RFI 1, on or about June 29, 2018, Plaintiff sent written  
10 correspondence to BOA titled “*Notice of Error Pursuant to 12 C.F.R. §1024.35;*  
11 *and Second Request for Information,*” (“RFI 2” and “NOE 1”). The combined RFI  
12 2 and NOE 1 were sent to BOA certified mail, return receipt requested.  
13  
14

15           59. RFI 2 requested the identity and address of the current owner, master  
16 servicer and current servicer of the loan; copies of all servicing notes, a copy of the  
17 original note, the identity, address and contact information for the custodian of the  
18 original loan documents, the last two escrow account analyses, and an accurate  
19 payoff statement.  
20  
21

22           60. Without the information requested by RFI 1 and RFI 2, Plaintiff  
23 remained at a total informational disadvantage concerning the status of the Loan  
24 and was unable to conduct a complete review as to the accuracy and completeness  
25 of the Loan and BOA’s accounting.  
26  
27  
28

1           61. NOE 1 stated that BOA committed an error by failing to apply an  
2 accepted payment under the terms of the mortgage loan; improperly charging fess  
3 without a reasonable basis to do so; and failing to provide an accurate payoff  
4 balance.  
5

6           62. Plaintiff's RFI 2 and NOE 1 also instructed BOA to refrain from  
7 reporting any adverse information to Credit Reporting Agencies (CRAs) during the  
8 60 days following its receipt of the NOE, as required by 12 C.F.R. § 1024.35(i)(1)  
9 while the error investigation was taking place, as follows:  
10

11                       Further, after receipt of a notice of error, you may not, for 60 days, furnish adverse information  
12 to any consumer reporting agency regarding any payment that is the subject of the notice of  
13 error. See 12 C.F.R. §1024.35(i)(1). I am hereby placing you on notice that all payments  
14 which became due after filing my Chapter 13 to present are subject to this notice of error, since  
I believe I am current with all such payments.

15                       Accordingly, you must desist from furnishing any adverse information regarding any of the  
16 above payments for 60 days, which will provide me time to review responsive documents to  
this notice of error and request for information.

17           63. RFI 2 and NOE 1 identified the Plaintiff by name, the Plaintiff's  
18 social security number, the Property address, and the Loan account number.  
19

20           64. Plaintiff sent RFI 2 and NOE 1 to BOA's Designated Address  
21 pursuant to 12 C.F.R. §§1024.35(c) and 1024.36(b), respectively.  
22

23           65. BOA received RFI 2 and NOE 1 at the Designated Address on July 3,  
24 2018.

25           66. BOA never notified Plaintiff that BOA had received RFI 2 and NOE 1  
26 within 5 days (excluding legal public holidays, Saturdays and Sundays) of  
27  
28

1 receiving Plaintiff's RFI 2 and NOE 1 in violation of 12 C.F.R. §§ 1024.36(c) and  
2 1024.35(d), respectively.

3  
4 67. Plaintiff was hopeful of resolving BOA's erroneous accounting.  
5 Instead, BOA sent Plaintiff delinquency notice on July 2, 2018; July 18, 2018 and  
6 July 25, 2018, threatening Plaintiff that his mortgage loan is delinquent and in  
7 danger of foreclosure.  
8

9 68. This caused Plaintiff additional anxiety and emotional distress. BOA  
10 was threatening foreclosure but Plaintiff was now sick, frustrated, angry and  
11 aggravated because BOA would not provide the information Plaintiff needed to  
12 review payments and BOA's accounting on the Loan. Plaintiff had made all  
13 payments on the Loan and BOA was trying to foreclose on his home.  
14  
15

16 69. Despite all the correspondence from BOA in July 2018, BOA never  
17 notified Plaintiff of any extension of time to respond to RFI 2 pursuant to 12  
18 C.F.R. § 1024.36(d)(2)(ii) nor notify Plaintiff of any extension to time to respond  
19 to NOE 1 pursuant to 12 C.F.R. §1024.35(e)(3)(ii).  
20  
21

22 69. On or about July 11, 2018, BOA provided some information,  
23 including a payoff statement (more than four months after Plaintiff had requested it  
24 in RFI 1) and the identity of the servicer and owner of the Loan (more than four  
25 months after Plaintiff had requested in in RFI 1.  
26  
27  
28

1           70.   However, BOA failed to provide the Life of Loan information, which  
2 was crucial for Plaintiff to verify the accuracy of the account, within the time limits  
3 prescribed in 12 C.F.R. §1024.36.  
4

5           71.   In fact, it was not until September 12, 2018 that BOA finally provided  
6 information that resembled a Life of loan history, more than six months after  
7 Plaintiff had requested in in RFI 1 (and more than 2 months after Plaintiff had to  
8 request it again in RFI 2) but it contained contradictory information.  
9

10           72.   The September 12, 2018 correspondence from BOA to Plaintiff stated  
11 that the Loan had not been paid since March 1, 2015, yet the life of loan  
12 documents showed BOA had received monthly payments on the Loan through  
13 September 4, 2018.  
14

15           73.   BOA also failed to comply with 12 C.F.R. §1024.35. BOA failed to  
16 correct the other errors alleged in NOE 1 regarding misapplied payments and  
17 inaccurate fees or perform a reasonable investigation into the matter, or inform  
18 Plaintiff that it believed that no error occurred with a reasons for such  
19 determination.  
20

21           74.   Additionally, despite Plaintiff's specific request to the contrary, and in  
22 violation of 12 C.F.R. §1024.35(i)(1), BOA continued reporting adverse  
23 information during the pendency of the 60 day "safe harbor" period.  
24  
25  
26  
27  
28

76. It was therefore impermissible and improper for Defendant to report derogatory information on Plaintiff's Experian credit report during the 60 day "safe harbor" provision of 12 C.F.R. §1024.35(i)(1).

77. Plaintiff has been living with uncertainty for months and it has been very stressful on him personally and has affected his employment. He has suffered sleepless nights and constant stress, frustration and anxiety.

78. BOA's failure to properly respond to Plaintiff's RFIs and NOE have caused Plaintiff continued costs and damages. Indeed, Plaintiff remains unable to conduct a complete accounting and correct BOA's accounting errors while under the threat of foreclosure.



1           79. Plaintiff has incurred significant costs in time to prepare, review, mail  
2 the RFIs and NOE to BOA, including out of pocket expenses to pay for mailing  
3 costs, stamps, paper, ink, along with the anxiety, frustration, anger, lost sleep,  
4 concerns about his employment, and emotional distress caused by BOA's failure to  
5 respond at the same time BOA was pursuing foreclosure.  
6

7  
8                           **Count 1: Violation of 12 C.F.R. §1024.36**

9           80. Plaintiff restates and incorporates herein all of the statements and  
10 allegations contained in paragraphs 1 through 79 in their entirety, as if fully  
11 rewritten here.  
12

13           81. 12 C.F.R. § 1024.36(a) provides, in relevant part, that a request for  
14 information may consist of "any written request for information from a borrower  
15 that includes the name of the borrower, information that enables the servicer to  
16 identify the borrower's mortgage loan account, and states the information the  
17 borrower is requesting with respect to the borrower's mortgage loan."  
18

19           82. RFI 1 and RFI 2 identified the name of the borrower, identified the  
20 mortgage loan account, and requested the information detailed above.  
21

22           83. 12 C.F.R. § 1024.36(d)(1) provides, in relevant part, that:  
23

24                   [A] servicer must respond to an information request by  
25 either:

26                   (i) Providing the borrower with the requested information  
27 and contact information, including a telephone  
28 number, for further assistance in writing; or

(ii) Conducting a reasonable search for the requested information and providing the borrower with a written notification that states that the servicer has determined that the requested information is not available to the servicer, provides the basis for the servicer's determination, and provides contact information, including a telephone number, for further assistance.

Furthermore, 12 C.F.R. § 1024.36(d)(2)(i) provides that:

A servicer must comply with the requirements of paragraph (d)(1) of this section:

- (A) Not later than 10 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives an information request for the identity of, and address or other relevant contact information for, the owner or assignee of a mortgage loan; and
- (B) For all other requests for information, not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the information request.

84. Plaintiff sent the RFIs to BOA at the Designated Address and BOA received the RFIs within one week of mailing.

85. The RFIs constituted a request for information pursuant to 12 C.F.R. § 1024.36(a) as the RFIs requested information “with respect to the borrower's mortgage loan.”

86. Pursuant to 12 C.F.R. § 1024.36(d)(2)(i)(B), BOA was required to provide written correspondence to Plaintiff in response to the RFIs “not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the

1 servicer receives the information request”, as contained in the RFIs, in compliance  
2 with the requirements of 12 C.F.R. § 1024.36(d)(1).  
3

4 87. As set forth above, BOA failed to respond to Plaintiffs requests for  
5 information timely and fully, or otherwise request and extension or provide a  
6 proper, valid objection as to why BOA was not required to respond by the deadline  
7 in violation of 12 C.F.R. § 1024.36(d)(1).  
8

9 88. BOA’s actions in failing to provide proper written correspondence to  
10 Plaintiff in response to the RFIs before deadline, constitutes willful violations of 12  
11 C.F.R. § 1024.36(d).  
12

13 89. BOA impermissible and intentionally reported derogatory information  
14 on Plaintiff’s Experian credit report during the 60 day “safe harbor” provision in  
15 violation of 12 C.F.R. §1024.35(i)(1).  
16

17 90. BOA’s actions constitute a pattern and practice of behavior in  
18 conscious disregard of Plaintiff’s rights.  
19

20 91. As a result of BOA’s actions, BOA is liable to Plaintiff for actual  
21 damages, statutory damages, costs, and attorneys’ fees, including, but not limited  
22 to incurring costs and fees for the preparation and mailing the RFIs and emotional  
23 distress.  
24

25  
26 ///

27 ///

**Count 2: Violation of 12 C.F.R. §1024.35(e)**  
**(Failure to Properly Respond Timely to Notice of Error)**

92. Plaintiff restates and incorporates herein all of the statements and allegations contained in paragraphs 1 through 91 in their entirety, as if fully rewritten.

93. 12 C.F.R. § 1024.35(a) provides, in relevant part, that “[a] servicer shall comply with the requirements of this section for any written notice from the borrower that asserts an error and that includes the name of the borrower, information that enables the servicer to identify the borrower's mortgage loan account, and the error the borrower believes has occurred.”

94. NOE 1 included the name of the Plaintiff, identified the mortgage loan account, and as set forth above, detailed the error that occurred.

95. 12 C.F.R. 1024.35(e)(1)(i) provides that a servicer must respond to a notice of error by either:

(A) Correcting the error or errors identified by the borrower and providing the borrower with a written notification of the correction, the effective date of the correction, and contact information, including a telephone number, for further assistance; or

(B) Conducting a reasonable investigation and providing the borrower with a written notification that includes a statement that the servicer has determined that no error occurred, a statement of the reason or reasons for this determination, a statement of the borrower's right to request documents relied upon by the servicer in reaching its determination, information regarding how the borrower can request such

documents, and contact information, including a telephone number, for further assistance.

Further, 12 C.F.R. § 1024.35(e)(3)(i) provides, in relevant part:

A servicer must comply with the requirements of paragraph (e)(1) of this section:

(A) Not later than seven days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the notice of error for errors asserted under paragraph (b)(6) of this section.

(B) Prior to the date of a foreclosure sale or within 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the notice of error, whichever is earlier, for errors asserted under paragraphs (b)(9) and (10) of this section.

(C) For all other asserted errors, not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the applicable notice of error.

96. Plaintiff sent NOE to BOA's Designated Address and was received by BOA within one week of mailing.

97. NOE 1 constituted a notice of error as such term is defined in 12 C.F.R. § 1024.35(a).

98. As detailed above, BOA failed to correct the errors, conduct a reasonable investigation that included a statement that BOA determined that no error occurred with the reasons or basis for such determination, or notify Plaintiff of a request for an extension of the time limit in violation of 12 C.F.R. §1024.35(e).

1           99. BOA's actions in responding to NOE 1 failed to meet the express,  
2 explicit requirements of either 12 C.F.R. 1024.35(e)(1)(i)(A) or 12 C.F.R.  
3 1024.35(e)(1)(i)(B) within the time limits.  
4

5           100. BOA's actions in failing to provide proper response to NOE 1  
6 constitutes a willful violations of 12 C.F.R. § 1024.35(e).  
7

8           101. BOA's actions constitute a pattern and practice of behavior in  
9 conscious disregard of Plaintiff's rights.  
10

11           102. As a result of BOA's actions, BOA is liable to Plaintiff for actual  
12 damages, statutory damages, costs, and attorneys' fees, including, but not limited  
13 to incurring costs and fees for the preparation and mailing the NOE and emotional  
14 distress.  
15

16                                   **SECOND CAUSE OF ACTION**  
17                   **EQUIFAX'S VIOLATION OF THE FAIR CREDIT REPORTING ACT**  
18                                   **PLUS FOUR ACCOUNT**

19           103. Plaintiff restates and incorporates herein all of the statements and  
20 allegations contained in paragraphs 1 through 102 in their entirety, as if fully  
21 rewritten.  
22

23           102. In an Equifax credit report dated May 9, 2018, Equifax reported  
24 inaccurate information for Plaintiff's Bank of America, N.A. ("BOA") and  
25 Plusfour, Inc ("Plusfour") accounts.  
26  
27  
28

1           103. On or about August 10, 2018, pursuant to 15 U.S.C. § 1681i(a)(2),  
2 Plaintiff disputed Equifax’s reported information regarding misreported trade lines  
3  
4 by notifying Equifax, in writing, of the incorrect and inaccurate credit information  
5 furnished by Equifax.

6           104. Specifically, Plaintiff mailed a written dispute, certified, return  
7  
8 receipt, to Equifax (the “Equifax Dispute Letter”), requesting disputed inaccurate  
9 and incorrect derogatory information be removed, corrected or deleted.

10           105. Equifax was required to conduct an investigation into the disputed  
11  
12 accounts pursuant to 15 U.S.C. § 1681i.

13           106. Equifax thereafter failed to comply with its obligation to provide  
14  
15 Plaintiff with the results of any “reinvestigation” pursuant to 15 U.S.C. §  
16 1681i(a)(6) completed relating to the disputes raised in the Equifax Dispute Letter  
17 regarding Plaintiff’s BOA and Plusfour accounts, instead declaring the accounts  
18 were “currently not reporting on the Equifax credit file”.  
19

20           107. As a result of Equifax’s failure to provide a consumer disclosure,  
21  
22 Equifax negligently failed in its duties as required by and in violation of 15 U.S.C.  
23 § 1681i(a)(6).

24           108. Further, Equifax willfully failed in its duties as required by and in  
25  
26 violation of 15 U.S.C. § 1681i(a) when Equifax failed to provide written notice to  
27 Plaintiff of the results of a reinvestigation not later than 5 business days after the  
28

1 completion of the reinvestigation (assuming an investigation was completed), by  
2 mail or, if authorized by the consumer for that purpose, by other means available to  
3 the agency. Indeed, Equifax failed to provide any evidence to Plaintiff it  
4 conducted any investigation into the BOA and Plusfour disputes raised in the  
5 Equifax Dispute Letter, thereby shirking Equifax's duties under the FCRA.  
6

### 7 8 **SHELLPOINT ACCOUNT**

9 109. On or about April 8, 2011, Plaintiff filed for Chapter 13 Bankruptcy in  
10 the United States Bankruptcy Court for the District of Nevada pursuant to 11  
12 U.S.C. §1301 *et seq.* Plaintiff's case was assigned Case Number 11-15252-leb (the  
13 "Bankruptcy").  
14

15 110. In an Equifax credit report dated May 9, 2018, Shellpoint Mortgage  
16 Servicing ("Shellpoint") inaccurately reported Plaintiff's "date of last activity"  
17 (hereinafter "DLA") was January 2018. The DLA date should have been no later  
18 than the Bankruptcy filing date. Reporting a DLA later than the Bankruptcy filing  
19 date caused the DLA to remain on Plaintiff's credit reported longer than allowed  
20 under the FCRA's obsolescence period codified at 15 U.S.C. § 1681c(a). This "re-  
21 aging" of the debt is illegally causing the trade line to remain on Plaintiff's credit  
22 report longer than legally permissible.  
23  
24  
25  
26  
27  
28



Shellpoint Mortgage Servicing												55 Seattle Pl Ste 600 Greenville SC 29601-2165 : (484) 894-1036															
Account Number				Date Opened		High Credit		Credit Limit		Term Duration		Term Frequency		Months Held		Activity Designator		Creditor Classification									
57181*				01/03/2008		\$108,488				15Y		Monthly		20		Paid and Closed											
Term, Act. of Date Reported		Balance Amount		Amount Paid Due		Date of Last Payment		Actual Payment Amount		Scheduled Payment Amount		Date of 1st Delinquency		Date of Last Activity		Days Met, Del. 1st Rpt.		Change Of Amount		Delinquent Pay Start Date		Delinquent Pay Amount		Delinquent Pay Date		Date Closed	
03/31/2018		\$0				01/2018								01/2018												02/2018	
Status - Pays As Agreed; Type of Account - Mortgage; Type of Loan - Conventional Re Mortgage; Whose Account - Individual Account; ADDITIONAL INFORMATION - Closed or Paid Account/Zero Balance; Real Estate Mortgage; Fixed Rate;																											
Historical Account Information																											
		Balance		Scheduled Payment Amount		Actual Payment Amount		Date of Last Payment		High Credit		Credit Limit		Amount Paid Due		Type of Loan		Activity Designator									
04/18		No Data Available																									
03/18		No Data Available																									
02/18		No Data Available																									
01/18		No Data Available																									
12/17		No Data Available																									
11/17		No Data Available																									
10/17		No Data Available																									

111. On or about August 10, 2018, pursuant to 15 U.S.C. § 1681i(a)(2), Plaintiff disputed Shellpoint's reported information regarding its reported obligation by notifying Equifax, in writing, of the incorrect and inaccurate credit information furnished by Shellpoint.

112. Specifically, Plaintiff sent the Equifax Dispute Letter requesting the above inaccurate and incorrect derogatory information be removed, corrected, or deleted.

113. Upon information and belief, upon receiving the Equifax Dispute Letter, Equifax timely notified Shellpoint of the dispute based on its mandated statutory duty pursuant to 15 U.S.C. § 1681i.

114. Defendant was required to conduct an investigation into this specific account on Plaintiff's consumer report pursuant to 15 U.S.C. § 1681i.

115. On or about August 30, 2018, Plaintiff received notification from Equifax through its “reinvestigation” (Equifax Report No. 8233070945) that Shellpoint and Equifax received notice of Plaintiff’s dispute pursuant to 15 U.S.C. § 1681i(a)(6), and verified the account as “Updated”. However, the Shellpoint tradeline now included a “Scheduled Payment Amount” of \$1,181 on an account also reported as “Paid and Closed”.

Shellpoint Mortgage Servicing 55 Beattie Pl Ste 600 Greenville SC 29601-2165 (484) 594-1038																
Account Number	Date Closed		High Credit		Credit Limit		Terms Duration		Terms Frequency		Months Paid		Activity Descriptor		Credit Classification	
57161*	01/03/2003		\$108,488		\$0		15		Monthly		20		Paid and Closed			
Repts. As of	Balance	Amount	Date of	Actual	Scheduled	Date of	Date of	Date of	Charge Off	Delinquent	Balance	Balance	Balance	Date	Date	Date
08/29/2018	\$0	\$0	02/2018	\$0	\$1,181	02/2018	02/2018	02/2018	\$0	\$0	\$0	\$0	\$0	\$0	02/2018	02/2018
State	Type of Account		Type of Loan		Where Account		Portfolio Indicator		Portfolio Status							
Pays As Agreed	Mortgage		Conventional Re Mortgage		Individual Account											
ADDITIONAL INFORMATION:																
Closed or Paid Account/Zero Balance																

116. Since Shellpoint Account 57161 was paid off and the credit report shows a balance of \$0 as of August 29, 2018, it was inaccurate, derogatory, and misleading to report a scheduled payment amount of \$1,181. There cannot be a scheduled payment amount when there is no debt owed.

117. A reasonable investigation by Equifax would have indicated the debt was fully paid on or before August 29, 2018.

118. Reporting an erroneous “scheduled payment amount” created a false presumption or implication Plaintiff had an outstanding debt and was committing monthly resources to service that debt, thereby jeopardizing and limiting Plaintiff’s creditworthiness and harming Plaintiff’s ability to obtain credit or diminish the amount of credit available to Plaintiff.

1           119. Equifax failed to conduct a reasonable investigation as required by 15  
2 U.S.C. § 1681i(a) and wrongly verified inaccurate information in connection with  
3  
4 Plaintiff's credit report.

5           120. Plaintiff incorporates by reference all of the above paragraphs of this  
6 Complaint as though fully stated herein.  
7

8           121. Equifax failed to comply with industry standards. Equifax failed to  
9 comply with the Metro 2 Format instructions and reported inaccurate information,  
10 thus violating its duty to follow reasonable procedures to assure maximum possible  
11 accuracy under 15 U.S.C. § 1681e(b) when preparing a consumer report.  
12

13           122. Not only was Equifax's reporting inaccurate and a departure from  
14 the credit industry's own reporting standards, Equifax's reporting was also  
15 materially misleading under the CDIA's standards as well.  
16

17           123. A "materially misleading" statement is concerned with more than just  
18 an inaccurate statement. It also includes omissions to credit entries, which in  
19 context create misperceptions about otherwise factually accurate data. *Gorman v.*  
20 *Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1163 (9th Cir. 2009).  
21  
22

23           124. Equifax failed to conduct a reasonable investigation as required by 15  
24 U.S.C. § 1681i(a) and wrongly verified inaccurate information in connection with  
25 Plaintiff's credit reports.  
26  
27  
28

1           125. Equifax failed to review all relevant information provided by Plaintiff  
2 in the dispute to Equifax, as required by and in violation of 15 U.S.C. § 1681i(a).

3  
4           126. Equifax re-reported the inaccurate derogatory information on  
5 Plaintiff's report. Specifically, Equifax still reported scheduled payment amounts  
6 on a closed account.

7  
8           127. Equifax, upon receipt of Plaintiff's dispute, failed to conduct an  
9 investigation with respect to the disputed information as required by 15 U.S.C. §§  
10 1681i(a).

11  
12           128. Due to Equifax's failure to reasonably investigate Plaintiff's dispute,  
13 it further failed to correct and update Plaintiff's information as required by 15  
14 U.S.C. § 1681s-2(b)(1)(E), thereby causing continued reporting of inaccurate  
15 information in violation of 15 U.S.C. § 1681e(b).

16  
17           129. Plaintiff's Equifax Dispute Letter also included a statement of dispute  
18 as that term is meant pursuant to 15 U.S.C. § 1681i(b). Specifically, Plaintiff  
19 requested that Equifax include a statement on Plaintiff's credit report stating that  
20 the instant account was disputed in the event Equifax failed to make the requested  
21 corrections identified in Plaintiff's Equifax Dispute Letter.

22  
23  
24           130. Upon information and belief, Equifax failed in Plaintiff's subsequent  
25 consumer reports containing the above disputed information to clearly note these  
26 accounts were disputed by Plaintiff and provide either Plaintiff's dispute  
27  
28

1 statements or a clear and accurate codification or summary of the disputes in  
2 violation of Equifax's statutory obligations under 15 U.S.C. § 1681i(c).

3  
4 131. Reporting and re-reporting the above-referenced derogatory  
5 information also constituted a violation of 15 U.S.C. § 1681g(a) because the lack  
6 of clarity in the information reported and re-reported has the tendency to confuse  
7 ordinary consumers like Plaintiff.

8  
9 132. Despite Plaintiff's efforts to correct Equifax's erroneous and negative  
10 reporting in writing, Equifax neglected, refused, or failed to do so.

11  
12 133. Equifax's continued inaccurate and negative reporting of the debts in  
13 light of its knowledge of the actual errors was willful. Plaintiff is, accordingly,  
14 eligible for statutory damages.

15  
16 134. Also as a result of Equifax's continued inaccurate and negative  
17 reporting, Plaintiff has suffered actual damages, including without limitation fear  
18 of credit denials, out-of-pocket expenses in challenging Defendant's wrongful  
19 representations, damage to his creditworthiness, and emotional distress.

20  
21 135. By inaccurately reporting account information relating to the debts  
22 after notice and confirmation of its errors, Equifax failed to take appropriate  
23 measures as required under 15 U.S.C. § 1681e(b).

1           136. The foregoing acts and omissions constitute numerous and multiple  
2 willful, reckless or negligent violations of the FCRA, including but not limited to  
3 each and every one of the above-cited provisions of the FCRA, 15 U.S.C. § 1681.  
4

5           137. As a result of each and every willful violation of the FCRA, Plaintiff  
6 is entitled to actual damages as the Court may allow pursuant to 15 U.S.C. §  
7 1681n(a)(1); statutory damages pursuant to 15 U.S.C. § 1681n(a)(1); punitive  
8 damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(2); and  
9 reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1681n(a)(3) from  
10 Defendant.  
11

12           138. As a result of each and every negligent noncompliance of the FCRA,  
13 Plaintiff is entitled to actual damages as the Court may allow pursuant to 15 U.S.C.  
14 § 1681o(a)(1); and reasonable attorney's fees and costs pursuant to 15 U.S.C. §  
15 1681o(a)(2) from Defendant.  
16  
17

18  
19                           **PRAYER FOR RELIEF**

20           Plaintiff respectfully requests the Court grant Plaintiff the following relief  
21 against Defendant:  
22

23                           **FIRST CAUSE OF ACTION**  
24                           **BOA'S VIOLATION OF RESPA**

- 25           • Actual damages pursuant to 12 U.S.C. §2605(f)(1); 15 U.S.C. §  
26 1681n(a)(1), and 15 U.S.C. §1681o(a)(1);  
27  
28

- Statutory damages pursuant to 12 U.S.C. § 2605(f)(2) and 15 U.S.C. § 1681n(a)(1) for each and every violation discussed above;
- Punitive damages pursuant to 15 U.S.C. §1681n(a)(2);
- Costs of litigation and reasonable attorney's fees pursuant to 12 U.S.C. §2605(f)(3), 15 U.S.C. § 1681n(a)(3), and 15 U.S.C. § 1681o(a)(2); and
- award of statutory damages pursuant to 15 U.S.C. § 1681n(a)(1);
- Any other legal or equitable relief the Court deems appropriate.

**SECOND CAUSE OF ACTION  
EQUIFAX'S VIOLATION OF THE FCRA**

- an award of actual damages pursuant to 15 U.S.C. § 1681n(a)(1);
- award of statutory damages pursuant to 15 U.S.C. § 1681n(a)(1);
- an award of punitive damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(2);
- award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1681n(a)(3), and 15 U.S.C. § 1681(o)(a)(1) against Defendant for each incident of negligent noncompliance of the FCRA; and
- any other relief the Court may deem just and proper.

1 **TRIAL BY JURY**

2 Pursuant to the Seventh Amendment to the Constitution of the United States  
3 of America, Plaintiff is entitled to, and demands, a trial by jury.  
4

5 Dated: February 12, 2019  
6

7 Respectfully submitted,  
8

9 /s/ Shawn W. Miller .

10 Shawn W. Miller, Esq.

11 David H. Krieger, Esq.

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